



**Virginia  
Regulatory  
Town Hall**

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	Department of Agriculture and Consumer Services
<b>VAC Chapter Number:</b>	2 VAC 5-400
<b>Regulation Title:</b>	Rules and Regulations for the Enforcement of the Virginia Fertilizer Law
<b>Action Title:</b>	Amend
<b>Date:</b>	May 1, 2001

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

### Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The purpose of the present regulatory action is to review the regulation for effectiveness and continued need, including the following: Amending the section of the regulation relating to (1) definitions; (2) plant nutrients; (3) labels; (4) investigational allowances and penalties; (5) minimum plant food allowed; and (6) sampling and analysis procedures to further clarify language and include changes needed to make it compatible with the 1994 changes to the Virginia Fertilizer Act.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.*

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The regulation is authorized by §3.1-106.4 of the Code of Virginia (1950), as amended. While the wording of this section appears to be discretionary, the section does authorize the Board to promulgate such regulations as may be necessary to give the full intent and meaning of this chapter. Hence, §3.1-106.7 (C) of the Code of Virginia (1950), as amended, mandates (shall) the use of methods of sampling and analysis adopted by the Commissioner or the Board, and §3.1-106.13 (A) of the Code of Virginia (1950), as amended, mandates (shall) the use of investigational allowances and assessments for deficiencies as established by regulation. In order for the agency to properly carry out these mandates, regulations to adopt definitions, records, manufacturing practices, and the distribution and storage of regulated products prior to final sale are deemed necessary in order to give the full intent and meaning of the Virginia Fertilizer Act. The regulation as currently written meets the minimum requirements of the state mandate. The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state law and/or federal law.

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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The purposes of this regulation are to ensure that: 1) regulated products are properly formulated and labeled; 2) the manufacturer's recommendations for use of these regulated products are in accordance with methods and procedures which enhance the safety, quality and quantity of the food supply for both humans and animals; 3) guidelines are established for the methods used to provide verification of labeling claims for regulated products; and 4) assessments against the manufacturer of a product which is deficient when compared to its guarantee, or which is not properly labeled and thus has caused a negative economic impact on a consumer, are paid to the consumer when he may be identified.

The goal of the regulation is to protect the health and welfare of citizens by properly labeling the contents of regulated products such as fertilizer-pesticide mixtures. The regulation requires the product label to show the proper use and application rates for the product so that improper applications, which might be harmful to persons, pets, livestock or the environment, are diminished.

The proposed amendments serve to make the regulation uniform with the Uniform Rules and Regulations of the Association of American Plant Food Control Officials (AAPFCO). All states and Canada are encouraged by AAPFCO and the National Association of State Departments of Agriculture to promote uniformity and decrease barriers of trade by adopting the AAPFCO uniform regulations. The amendments will assist Virginia based manufacturers of regulated products in competing outside of the Commonwealth of Virginia since the Virginia regulations will mirror regulations in other states.

The regulation serves to clarify provisions within the Code of Virginia and provides guidance to individuals affected. The regulation provides a uniform system of labeling regulated products so consumers can utilize the products without causing harm to themselves, animals or the environment. The regulation also serves to prevent unscrupulous manufacturers from intentionally marketing products that will cause economic harm to Virginia agriculture and consumers by providing less nutrient value than what is guaranteed on the label.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.*

Substantive changes to existing sections include:

1. Reducing the amount of primary and secondary nutrients required in fertilizer to allow for the use of organic and new types of fertilizer. The existing regulation prevents these fertilizers from being distributed in Virginia.
2. Reducing the assessments for deficiencies in secondary elements more closely follows the modern agricultural practice of applying fewer nutrients in split applications to more closely meet the nutritional needs of the crop.
3. Amended labeling requirements will allow regulated product manufacturers to use and guarantee new forms of nutrients such as slowly available and organic forms of nitrogen. This will allow more forms of regulated products to be distributed in Virginia, which will increase competition in the industry while providing more label information for consumers to make an informed choice between products.
4. Adopting sampling and analysis procedures that are scientifically based and that are consistent with other states guarantees that Virginia regulatory officials will treat the regulated industry in a fair and equitable manner.

## Issues

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

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The advantages of the amendments include: 1) the public will have greater access to regulated products that are more precisely labeled to protect their health; 2) the industry will be able to market products without being burdened by unnecessary regulation; 3) the regulations will be easier to read and understand for the industry and the regulators; and 4) the regulation will be more uniform with other states allowing for increased interstate competition in the industry.

There are no disadvantages to the public or the Commonwealth.

## Fiscal Impact

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

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**The fiscal impact of the amendments will be for approximately thirty-five members of the industry that will have to amend the labels on some regulated products they market. Manufacturers normally reprint product labels every six months. Therefore, any modifications to labels can be accomplished in the normal course of business at a minimal cost. Most products will not have to be relabeled since manufacturers that market in multiple states have already made the necessary changes to comply with the updated requirements in other states. There is no anticipated fiscal impact on the Commonwealth of Virginia, localities, the agency or Virginia citizens.**

## Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

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2VAC5-400-10 – The proposed amendments will reflect the correct citation of the Code of Virginia for the Virginia Fertilizer Act and the Virginia Pesticide Control Act.

2VAC5-400-20 – The proposed amendments will allow for new forms of fertilizer to be sold with guarantees for secondary and minor elements below the minimum percentages allowed in other fertilizers.

2VAC5-400-30 – The proposed amendments will allow fertilizers to be sold by net volume for liquids and for some soil amendments rather than just by net weight. It will also allow manufacturers to use and claim on the label new forms of fertilizer ingredients such as slowly available plant nutrients.

2VAC5-400-50 – The proposed amendments will reduce the assessment for deficiencies in secondary and minor elements from three times to two times the value of the deficiency.

2VAC5-400-80 – The proposed amendments will reduce the minimum amount of plant food allowed in a product from 18% to 3.0% for chemical fertilizers and 1.5% for organic fertilizers. This allows increased competition in the industry and more organic products to be marketed to Virginia consumers. Less-concentrated fertilizers are easier and safer to use by consumers. Most organic fertilizers do not contain 18% plant food and are, therefore, prohibited from the market.

2VACS5-400-90 – This new section will require the Commissioner to use scientifically based and uniform procedures for sampling, preparing and analyzing fertilizer samples. This provides for fair and equitable regulatory treatment of the industry.

## Alternatives

*Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

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The regulation addresses the minimum requirements of §3.1-106.4, §3.1-106.7 (C), and §3.1-106.13 (A) of the Code of Virginia (1950), as amended. The regulation serves to clarify provisions within the Code of Virginia and provides guidance to individuals affected. There are no federal regulations governing these regulated products. Due to the nature of the mandate of the Code of Virginia for this regulation, an alternative measure does not exist.

## Public Comment

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

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The agency received no public comment in response to the Notice of Intended Regulatory Action.

**Clarity of the Regulation**

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

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The agency, through examination of the regulation, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

**Periodic Review**

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

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The agency intends to review this regulation within three years after the amended regulation takes affect.

**Family Impact Statement**

*Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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Unless otherwise discussed in this report, this regulation has no impact upon families.